IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2936 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANBHAI REVADAS PATEL & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR ND BUCH for MR ND NANAVATI for Petitioner(s) : 1 - 2.
MR LB DABHI, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 31/01/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India

praying for injunction against the respondents from terminating the service of the petitioner for four months (during the monsoon season). The petitioner has further prayed for the declaration that the policy and practice including the Government Resolution/s Circular/s and Rule/s, if any, for giving appointments for four months is ultra vires of Articles 14 and 16 of the Constitution of India. The petitioner has further prayed for quashing and setting aside the proposed order of termination of the respondents.

2. Notice was issued by this Court on 30.6.1987 and ad interim relief as prayed for in para-17(D) of the petition was granted. Ad interim relief was to the effect that the respondents were restrained from terminating the services of the petitioner. The petition was admitted and rule was issued on 17.11.1988 and ad

interim relief granted earlier was ordered to be continued. The petition was ordered to be heard alongwith Special Civil Application No.2603 of 1982.

3. The Special Civil Application No.2603 of 1982 was also disposed off by the Division Bench of this Court on 7.3.2000. The Division Bench has observed in that matter that the matter was amicably settled on 9.9.1982 and ad interim relief granted earlier was ordered to be continued and 18 years have passed and most likely all the petitioners who had continued on the strength of the interim order must have been accommodated as per the assurance contained in the affidavit in reply. The Court has also observed that the petitioners could not have claimed such absorption as a matter of right and the petition was, therefore, rejected and rule was discharged.

4. Based on the aforesaid judgment of the Division Bench another similar petition was decided by this Court on 28.9.2004 and order was passed in Special Civil Application No.3467 of 1985. In that case also the Court observed that identical questions have been raised by the petitioner and the petition was admitted in the year 1985 and since some interim benefits were being made available to the petitioner, interim relief was not prayed for. In that view of the matter and in view of the observations of the Division Bench in Special Civil Application No.2603 of 1982 and the final conclusion reached therein, the Court has not entertained the said petition since identical questions arose in the said petition.

5. In view of the aforesaid two decisions of this Court in Special Civil Application

No.2603/1982 and Special Civil Application No.3467/1985, the Court is of the view that since in the present petition, the same issue is involved, the petition can be disposed off in the same manner. The main issue in the petition is only to the extent of seeking stay against the respondents from terminating services of petitioner for four months (during the monsoon season). That period has expired and even if by virtue of interim order certain benefits were derived by the petitioner till this date, the same does not create any right in favour of the petitioner. As observed by the Division Bench in the aforesaid judgment, the petitioner could not have claimed such benefits as a matter of right and relief prayed for cannot be granted.

6. The petition is accordingly disposed off. Rule is discharged without any order as to

costs.

(K. A. PUJ, J.)

kks